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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,146	06/14/2002	Mark A. Kappel	126063	3242
27256	7590	11/26/2004	EXAMINER	
ARTZ & ARTZ, P.C. 28333 TELEGRAPH RD. SUITE 250 SOUTHFIELD, MI 48034			PHAN, THIEM D	
			ART UNIT	PAPER NUMBER
			3729	

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/064,146	KAPPEL ET AL.	
	Examiner	Art Unit	
	Tim Phan	3729	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____  | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. The amendment filed on 7/29/04 has been fully considered and made of record.
2. The rejection of claims 1-13 which were rejected in Office Action mailed on June 16, 2004 under 35 USC 102 or 35 USC 103; these claims are rejected under either 35 USC 102 or 35 USC 103 herein for substantially the same reasons as provided in the previous Office Action which is incorporated herein and made a part hereof.

### *Response to Arguments*

3. Applicants' arguments filed 7/29/04 have been fully considered but they are not persuasive for the following reasons:

Applicants recite: "With respect to Fig. 9-12, claim 1 recites a tool 140 ... connector portion 22 ... piston assembly 41 ... cross-member 156 ... post head 158 ... " (Cf. Remarks, page 2, paragraph 4; Claim 1). The Patent Office's position as stated in the preceding Action was and continues to be that since the **figured and numbered** limitations are **not claimed**; and the prior art Omand (USPN 4,660,281 hereinafter '281) teaches each of the claimed limitations: a piston assembly (Cf. Fig. 2, 15) having a channel therethrough; a cross-member (Cf. Fig. 2, 20) slidably receiving said piston assembly (Cf. Fig. 2, 15), said cross-member having a slot for

pins(Cf. Fig. 5, 23) therein, said cross-member having a post head (Cf. Fig. 2, 42a) sized to be received within said retraction feature; and a pin (Cf. Fig. 5, 23) positioned within said channel and slidably received within said slot.

Applicants' remarks: "... the piston assembly is fixably mounted on the cross-member." (Cf. Remarks, page 2, paragraph 5, line 4) are not true since the '281 teaches a hole (Cf. Fig. 5, between 20a & 20b) in the cross-member where the piston (Cf. Fig. 5, 15) is fed through without fixation.

Applicants' citations: "Claim 1 also recites a pin position ... slidably received within a slot... pins 23 ... are not slidably received therein."; the '282 teaches that limitation since the pins are slidably received in the slot in order to assemble the tool.

Furthermore, Applicants remark: "... the spring is recited ... positioned between the handle and the grip... the placement of the spring is in a completely different place." (Cf. Remarks, page 3, paragraph 3, lines 11 ff.; Claim 10), the Patent Office states that the '281 teaches the claimed invention and it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply a spring positioned on said piston between said handle and said grip, said spring urging said handle away from said grip and a sleeve adjacent to the grip for slidably receiving the piston, since it was known in the art that a pair of springs (Cf. Fig. 5, 55 & 56) mounted at the post-heads (Cf. Fig. 5, 42 & 44) with a pair of sleeves (Cf. Fig. 5, 55 & 56) for sliding the posts (Cf. Fig. 5, 42) would provide the same functionality as the claimed spring on the piston (Cf. Fig. 5, 15).

Art Unit: 3729

4. With the remainder of the claims rejected under either 35 USC 102 or 35 USC 103, they stand rejected as carefully articulated in the previous Office Action and in Responses to Remarks in paragraph 3 above.

It appears that Applicants fail to recognize the scope of the claims when judged in view of the '281. (Cf. MPEP 2111 and *In re Geuns*, 26 USPQ 2<sup>nd</sup> 1057 (Fed. Cir. 1993)).

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Art Unit: 3729

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tim Phan whose telephone number is 571-272-4568. The examiner can normally be reached on Monday - Friday, 9AM - 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter VO can be reached on 571-272-4690. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Tim Phan  
Examiner  
Art Unit 3729

  
**CARL J. ARBES**  
**PRIMARY EXAMINER**

tp  
November 19, 2004